



**EWM v CG; CG (Interested Party) (Matrimonial Cause E056 of 2021)
[2023] KEHC 24420 (KLR) (Family) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MATRIMONIAL CAUSE E056 OF 2021
MA ODERO, J
OCTOBER 19, 2023**

BETWEEN

EWM PLAINTIFF

AND

CG RESPONDENT

AND

CG INTERESTED PARTY

RULING

1. Before this Court for determination is the Notice of Motion dated 14th November 2022 by which the Applicant CG (the Interested Party) seeks the following orders:-

- “1. Spent.
- 2. That the Honourable Court be pleased to order and direct the Plaintiff in immediately releasing the motor vehicle KBZ ---G to the Applicant/Interested party herein.
- 3. That the OCS of the nearest Police Station where the motor vehicle KBZ ---G is spotted and/or seen be allowed to take the said motor vehicle immediately and release the same upon the applicant/interested party herein.
- 4. That costs of this application be borne by the Plaintiff herein.”

2. The application was premised upon Sections 1A, 1B, 3A and 3B of the *Civil Procedure Act* Cap 21, laws of Kenya, Order 40 and 51 of the *Civil Procedure Rules*. 2010 Articles 22, 23, 48, 50 and 165 of the



Constitution of Kenya 2010 and all other enabling provisions of law and was supported by the Affidavit of even date and the Further Affidavit dated 7th December 2022 both sworn by the Interested Party.

3. The Plaintiff EM opposed the application through the Replying Affidavit dated 7th December 2022. The matter was canvassed by way of written submissions. the Interested Party filed the written submissions dated 30th January 2022 whilst the Plaintiff relied upon her written submissions dated 24th February 2023.
4. The interested Party stated That vide a Ruling delivered on 23rd September 2022 dismissing the Plaintiff's application for injunctive orders, the court found That the said motor vehicle was not matrimonial property.
5. The Interested Party who claims to be the registered owner of the motor vehicle KBZ ---G Toyota Harrier seeks orders directing the Plaintiff to release the said vehicle to him.
6. The Interested Party alleges That the Plaintiff has removed the vehicle from its last location at Ngaradesai Road and has hidden the same. He is apprehensive That the vehicle may continue to depreciate in value due to wear and tear.

Background

7. The Applicant filed an Originating Summons against the Respondent CG seeking various orders in respect of matrimonial property. *Vide* a court ruling on 23rd September 2022, Charles Gakage was enjoined as an Interested party in these proceedings. He claims to be the owner of the motor vehicle Registration KBZ ---G - Toyota Harrier which is registered in his name.
8. The Applicant argues That the vehicle is matrimonial property and was meant for the use by their children. She averred That the trial court in Milimani Children Case No. E498 of 2021 ordered the Respondent to maintain the vehicle for use by their children. That the Interested Party did not challenge That order until the present case was filed. She argued That the vehicle was registered in the Respondent's name who later disposed it and sold it off to the Interested Party.
9. The Interested Party on the other hand argues That the property is not matrimonial property. He argued That the court has already made a determination regarding ownership of the said vehicle. He urges the court to direct That the vehicle be released to him.
10. On her part vide her Replying Affidavit the Plaintiff alleges That the said vehicle has always been matrimonial property and is used to ferry the children to school.
11. The Respondent alleges That the vehicle has always been registered in the name of the husband upto the time when this suit was filed. That it is only after the filing of suit That the said vehicle was fraudulently transferred to the Interested Party. The Respondent claims to be a joint owner of the vehicle and urges the court to dismiss this application.

Analysis and Determination

12. I have carefully considered this application the Reply filed thereto as well as the written submissions filed by both parties.
13. This dispute revolves around the Toyota Harrier vehicle Registration No. KBZ ---G .
14. The Plaintiff claimed That the said vehicle was matrimonial property but was fraudulently transferred by the Respondent to the Interested Party in an attempt to evade justice.



15. The question of ownership of the said vehicle was determined by Hon. Lady Justice Thande in her ruling delivered on 23rd September 2022.
16. In That ruling the Hon. Judge stated as follows:
- “I have looked at the exhibited documents relating to the motor vehicle. Page 1 of the agreement for sale indicates That it was made on 2/9/21. The signature page however indicates That both the Respondent and Charles signed the same on 2/7/21. The logbook in favour of Charles indicates That the same was issued on 1/9/21. Had the agreement been entered into on 2/9/21 as contended by the Applicant, then the logbook would not have been dated 1/9/21.”
17. It is trite law That he who alleges must prove. Section 107 of the *Evidence Act* stipulates:
- “1. Whoever desires any court to given judgment as to any legal or liability dependent on the existence of facts which he asserts must prove That those facts exist.
 2. When a person is bound to prove the existence of any fact it is said That the burden of proof lies on That person.”
18. “The Applicant desired the Court to believe That the sale of the motor vehicle by the Respondent to Charles was a scheme to defeat justice. She was under a legal obligation to place before this Court evidence to support her claim. She has however failed to do so and her burden of proof remains undischarged. Accordingly, based on the material before me and in the absence of evidence to the contrary, I find That the motor vehicle belongs to Charles and belonged to him on 8/9/21 when the orders were made. Having so found, it follows That the orders issued on 8/9/21 and extended on 17/3/22 are prejudicial to him.” [own emphasis]
19. Therefore, a competent court of law has made a determination That the vehicle in question belongs to the Interested Party. The Plaintiff has not appealed That Ruling. She therefore has no right to retain custody of the Toyota Harrier vehicle. In any event the value of the vehicle is quantifiable and if the Plaintiff proves the allegations of fraudulent transfer of the vehicle by the Respondent then she may be adequately compensated in monetary terms.
20. I therefore find merit in this application and order That the motor vehicle KBZ ---G Toyota Harrier be returned immediately to the Interested Party and in any event within seven (7) days. Each party to bear its own costs.

DATED IN NAIROBI THIS 19TH DAY OF OCTOBER, 2023.

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MAUREEN A. ODERO
JUDGE

